IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12909 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAJESH ALIAS RAJU BABLABHAI SOLANKI (DETENU)

Versus

DIST MAGISTRATE

Appearance:

MS DR KACHHAVAH for Petitioner

MR HH PATEL, AGP, for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 16/02/2001

ORAL JUDGEMENT

Mrs DR KACHHAVAH for Petitioner. Mr HH PATEL, AGP, for Respondent No. 1, 2, 3

Heard the learned counsel for the parties. By

this petition under Article 226 of the Constitution of India the petitioner challenges the order dated 27.6.2000 of the respondent no.1 under which the petitioner is ordered to be detained under the Gujarat Prevention of Anti-Social Activities Act, 1985, as a dangerous person.

2 Challenging this order the learned counsel for the petitioner raised many-fold contentions but as this petition deserves acceptances only on one ground, it is not necessary nor it is advisable to save valuable and precious time of the Court which are already facing serious problem to overcome this heavy pendency of matters to refer, discuss and give decision thereon.

3 It is contended that the last case was registered against the petitioner on 17.5.2000 and the order of detention has been passed on 27.06.2000. There is delay in passing the order of detention and only on this ground this petition deserves acceptance.

3 The learnd counsel for the respondent on the other hand supported the impugned order.

4 The detention order is made on 27th June 2000. The last case against the petitioner was registered on 17.5.2000 and he was enlarged on bail therein on 20.5.2000 by the trial Court. The learned counsel for the respondents does not dispute these facts. In all the three cases which were registered against the petitioner the petitioner was released on bail by the Court. It is urged by the learned counsel for the respondent that statements of four privileged witnesses were recorded and some time has been taken in passing of the order of detention, which cannot be taken to be fatal to the action taken by the respondent. I find that statements of four privileged witnesses were recorded on 22.5.2000. It is true the delay itself in passing the order of detention may not be a ground for invalidating the action of the detaining authority but when the delay in passing the detention order is taken a ground by the detenu, the detaining authority has to furnish an explanation for this delay. This explanation for the delay can be furnished either by giving out those reasons in the grounds of the detention itself or by filing affidavit-in-reply to the Special Civil Application on receipt of the notices of the Rule. The learned counsel for the respondent fairly admitted that in the grounds of the detention the detaining authority has not furnished any explanation for this dely. So, this opportunity which was available to the detaining authority has not

been availed of. From this fact, an inference can reasonably be drawn that the detaining authority has no explanation whatsoever for this delay made in passing of the detention order of the petitioner and that is the reason that it has found it convenient to remain silent. Be that as it may be, the second opportunity was there to the respondent but that was not also availed by them. The learned counsel for the respondents fairly conceded that none of the respondents has cared to file reply to the Special Civil Application. In view of this admitted position, it is a case where the averments made by the petitioner in this petition remain uncontroverted and same are to be taken to be correct. Delay is there and for which no explanation has been furnished. Though the learned counsel for the respondents has tried to give out oral explanation for this delay, it cannot be permitted for the reason that the petitioner may not have any opportunity to file affidavit-in-rejoinder. Otherwise also from the oral explanation furnished for this delay, it is hardly of any substance and help to the respondents. The statements of the privileged witnesses were recorded on 22.5.2000 and the detention order has been made on 27.6.2000. So there is a delay in making of this order even if we go by this date of recording of the statements of those witnesses. Not only this, the statements were verified on 26.6.2000. It would have really been the case of nature as what it is projected by the detaining authority, I fail to see any justification in their action to make a long delay in verifying statements of the privileged witnesses.

5 In these undisputed facts of the case, I am satisfied that the delay in passing the order of detention of the petitioner is not explained. From the grounds of detention I find that those were prepared or would have been prepared in the month of May 2000. If we go by the facts of the case, there is all more possibility that the grounds of detention could have been prepared also earlier to 20.5.2000 i.e. the day on which in last criminal complaint the petitioner was enlarged on bail. If there would have been a real case to detain the petitioner as a dangeous peson why this delay has been made. If we go by this aspect of the matter, this delay is certainly fatal to the case of the respondent.

6 In the result, this Special Civil Application succeeds and the same is allowed. The order of detention of the petitioner dated 27.06.2000 is quashed and set aside. The petitioner Rajesh @ Raju Balabhai Solanki, the detenu, at present in Porbandar Jail, be set at liberty forthwith if he is not required in any other

case. Rule is made absolute accordingly. No order as to costs.

***

(mohd)